

Exhibit 48

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

COPY

MIYANO MACHINERY USA INC.,)

Plaintiff,)

-vs-)

CIVIL ACTION
NO. 08 C 526

MIYANOHITEC MACHINERY,)
INC., THOMAS ("TOM") MIYANO)
a/k/a TOSHIHARU MIYANO and)
STEVEN MIYANO, a/k/a)
SHIGEMORI MIYANO,)

Defendant.)

DEPOSITION OF DEREK OLCZAK

MARCH 4, 2008 - 1:45 P.M.

The deposition of DEREK OLCZAK, taken pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Jerry Satterlee, a Certified Shorthand Reporter within and for the State of Illinois, at 200 West Adams Street, Suite 2850, Chicago, Illinois.

1 Q. Any report?

2 A. Not that I am aware of. Not I aware
3 of.

4 Q. Are you employed by Miyano USA or
5 Miyano-Japan?

6 A. Miyano USA.

7 Q. What about these, the Japanese R&D
8 department servicemen that you said you sent the
9 complaints to, are they employed by Miyano USA?

10 A. Miyano-Japan.

11 Q. Miyano-Japan.

12 I want to just back up a little bit.
13 Miyano USA, what products and services does your
14 company offer?

15 A. We do -- we do sell Miyano machines
16 in U.S. and the American market and service them.
17 We do warranty service and non-warranty service
18 as well as we do recondition old machines.

19 Q. I am sorry. Recondition and what did
20 you say?

21 A. Rebuild and recondition old machines.

22 Q. Are the machines manufactured in
23 Japan?

24 A. Yes.

1 Q. Are any of them manufactured here in
2 the USA?

3 A. At the present time?

4 Q. Are there plans to manufacture them?

5 A. At the present time? I did not
6 understand this question exactly. You ask me
7 they were?

8 Q. I am asking if they are manufactured
9 in Japan or the USA?

10 A. At the current time, yes, they are
11 manufacturing in Japan.

12 Q. And in the future are they planning to
13 manufacture in the USA?

14 A. I don't know those plans.

15 Q. What about in the past?

16 A. In the past we did have a production
17 in the USA.

18 Q. From when to when?

19 A. Late '80s to 1996, 1997.

20 Q. Was that in addition to products from
21 Japan or was it sold and manufactured here?

22 A. That was machines sold in here,
23 certain models have been sold here. Certain
24 models we have been sold in the United States.

1 We assembled them here.

2 Q. So from '80 to '96-'97 you assembled
3 machines here?

4 A. Correct.

5 Q. With the parts coming from Japan?

6 A. Parts were supplied by Japan.

7 Q. And since '97 has the machines always
8 come from Japan?

9 A. Complete machines came from Japan.

10 Q. Do you know why the change?

11 A. No idea.

12 Q. Okay. You mentioned that the machines
13 have -- that you do warranty service and
14 non-warranty service. What kind of a warranty do
15 the machines come with?

16 A. One year parts and labor and then two
17 years for control. That is offer by control
18 people from Fanuc, a two-year warranty. One-year
19 warranty are offer from us, from Miyano service
20 department.

21 Q. And who offers the two years?

22 A. Fanuc America.

23 Q. Are they affiliated with your company?

24 A. Correct.

1 Q. And in what way?

2 A. We buying control from them.

3 Q. Where is that company?

4 A. We buying the control from Japan
5 originally, buying this from Fanuc Japan.

6 Q. Can you spell that?

7 A. F-A-N-U-C, Fanuc America.

8 Q. Is Fanuc America owned by
9 Miyano-Japan?

10 A. No, separate company.

11 Q. Separate company.

12 Do you handle any kind of warranty
13 service regarding these controls.

14 A. No.

15 Q. Just Fanuc?

16 A. Fanuc does.

17 Q. Okay. On the warranty repairs on the
18 one-year parts and labor that you handle, are
19 these issues handled within the U.S. or is Japan
20 involved?

21 A. Most of the time the U.S, there are
22 times where malfunction, like I mention with
23 design, and Japan handle that. Help us.

24 Q. How do you decide if it is design or

1 otherwise?

2 A. Each customer have so much problem
3 with certain part, I decide it is design from the
4 beginning. If we have complaints within three
5 months more than three, four complaints about the
6 same problem, I will decide it is something wrong
7 from original assembly.

8 Q. How many of these design complaints
9 have you had this year?

10 A. None.

11 Q. How about last year?

12 A. One.

13 Q. What was that?

14 A. That was coolant leaking through the
15 ball screw.

16 Q. On what machine?

17 A. A BX-26S.

18 Q. You mentioned there are seven -- I
19 think you said seven or six servicemen underneath
20 you. How often are they in the field doing
21 repairs?

22 A. Every second day.

23 Q. Every second day?

24 A. (INDICATING)

1 Q. So what do they do on the days they
2 are not in the field?

3 A. Help me with the phones. Also, take
4 care of communication with -- from Japan from
5 original factory, and in-house work as repairing,
6 rebuilding older machine.

7 Q. Does Miyano USA have a dress code?

8 A. A dress code?

9 Q. Yes.

10 A. I don't know what you mean. What we
11 wearing? All service guys have a logo and that
12 name. That is standard service uniform.

13 Q. The one you are wearing today?

14 A. Exactly, yes.

15 Q. Are you required to wear that shirt as
16 part of your job?

17 A. When we go in the field, yes.

18 Q. But not at the office?

19 A. In-house service personnel wearing
20 these shirt.

21 Q. Is that the six servicemen?

22 A. Six servicemen.

23 Q. But not you?

24 A. I do all the time pretty much.

1 Q. When did you get the shirt you are
2 wearing?

3 A. When did I get? We been always have
4 this.

5 This uniform?

6 Q. Yes.

7 A. Always had these uniforms.

8 Q. What about that shirt, that specific
9 shirt?

10 A. This specific shirt? I been having
11 this for since I work.

12 Q. Since '97?

13 A. Since '97.

14 I don't know if they change this
15 particular shirt, but I have this style shirt
16 since '97.

17 Q. What about that specific kind of
18 shirt?

19 A. This one what I wearing right now?

20 Q. Yes.

21 A. This exactly one, right?

22 Q. Yes.

23 A. We have a company, uniform company.
24 I think they changing just the material, but

1 style they still become the same. They just
2 changing the material. After so many washes, you
3 get grease and everything, and they changing this
4 shirt, the material, but all this components and
5 logo become the same.

6 Q. Right. I am just asking how long you
7 have had that shirt?

8 A. Wear today.

9 Q. Today is the first day you have worn
10 it?

11 A. No, no. Today I wear it, but I had
12 this shirt since I think last year.

13 Q. Since last year?

14 A. Yes.

15 Q. And the shirt you said that you have
16 had since 1997, have they had the logo since 1997,
17 that exact logo?

18 A. The service uniform shirt, yes.

19 Q. That exact logo?

20 A. Yes.

21 MR. MANZO: Do you want to say something on
22 the record what the logo is.

23 MR. SMITH: I am going to actually -- I
24 think I have a picture here.

1 BY MR. SMITH:

2 Q. You mention that you refurbish
3 products or that your servicemen refurbish
4 products.

5 Is that yes?

6 A. Yes.

7 Q. When you refurbish products, do you --
8 do you resell the product then?

9 A. Yes.

10 Q. How does the refurbishing work?

11 A. We do complete disassemble all
12 components, check all components, replace
13 whatever is wearable, repaint, and realign, bring
14 to factory specs and assemble again.

15 Q. Is that done here in the USA?

16 A. In the USA.

17 Q. When you refurbish, do you purchase
18 the product back from the customer?

19 A. We sometimes do.

20 Q. Sometime you do and sometimes you
21 don't?

22 A. Sometimes. We have distributors.
23 They purchase directly and bring to our factory
24 and they pay us for recondition service.

1 numbers and service numbers for Miyano Machinery
2 USA?

3 A. Yes.

4 Q. Yes?

5 A. Yes.

6 (The document was thereupon marked
7 for identification as Olczak
8 Deposition Exhibit No. 6, as of
9 3/4/08.)

10 BY MR. SMITH:

11 Q. Do your technicians go on site for
12 installation?

13 A. Yes.

14 Q. And they also go on site for repairs?

15 A. Yes.

16 Q. What percentage of their -- what
17 percentage of the time do they go for
18 installation?

19 A. About fifty-fifty.

20 Q. About fifty-fifty?

21 A. Uh-huh.

22 Q. So you said like nearly every day they
23 go -- every day or every other day they go on site
24 and half of those are for repairs and half of

1 those are for installation?

2 A. Right.

3 Q. This is Exhibit 6. Do you recognize
4 this?

5 A. Yes.

6 Q. What is it?

7 A. Miyano LZ-01RY.

8 Q. It is a shirt with the stylized
9 Miyano?

10 A. Without the triangle.

11 Q. Yes.

12 And do you guys use those shirts?

13 A. Yes, we do.

14 Q. When do you use them?

15 A. Occasionally in the office.

16 Q. In the office?

17 A. Uh-huh.

18 Q. Do you wear them to customer sites?

19 A. If not dirty.

20 Q. If not dirty.

21 How long have you had those shirts?

22 A. Those shirts came together with the
23 BX, so it will be 2004.

24 Q. About 2004?

1 business card doesn't include the triangle mark,
2 the Miyano triangle mark?

3 A. Right.

4 Q. That is correct?

5 A. Yes.

6 MR. SMITH: Nothing further.

7 EXAMINATION

8 BY MR. MANZO:

9 Q. I want to review some of your
10 testimony, Mr. Olczak.

11 You are the service manager at Miyano
12 USA?

13 A. Yes.

14 Q. And when you go on a sales call --
15 Sorry. When you go on a service call, you usually
16 wear the shirt that you have worn today, right?

17 A. Right.

18 Q. And that would be a blue-colored
19 shirt, short sleeve, button down with two front
20 pockets, right?

21 A. Yes. And we have a version of long
22 sleeve sometimes.

23 Q. And over the right pocket you have a
24 label that has got your name on a white background

1 with a red border, correct?

2 A. That is correct.

3 Q. And over the left pocket you have got
4 another emblem that is white with a red border,
5 and on that it has the triangle logo, and next to
6 the triangle logo, which is in red, the words in
7 blue, "Miyano Machinery USA Inc."; is that right?

8 A. Correct.

9 Q. And you also have a long sleeve
10 version?

11 A. Yes.

12 Q. And it is part of a uniform?

13 A. Yes.

14 Q. So you have slacks that go with it?

15 A. Yes.

16 Q. And this is provided to your service
17 engineers; they each have several of these shirts?

18 A. Yes.

19 Q. With their own names on them?

20 A. Yes.

21 Q. Do they travel to places outside the
22 City of Chicago to do their work?

23 A. Yes.

24 Q. Do they wear their shirts while they

1 are traveling?

2 A. Yes. When they travel, no, but when
3 they do work they change.

4 Q. So when they appear on customer
5 premises, they are usually wearing the shirt like
6 you have got on?

7 A. Right.

8 Q. And that is at customer sites?

9 A. That is a customer site.

10 Q. And that is for installation and for
11 service and repair?

12 A. Correct.

13 Q. And you remember that triangle M being
14 on the shirt for this purpose or on the shirt for
15 at least the last five years; is that what you
16 have said?

17 A. Yes.

18 Q. And it is your best recollection that
19 the shirts before that also had them?

20 A. Yes. I believe so.

21 Q. And it is your testimony that
22 sometimes the service people on occasion wear
23 other shirts that do not have the triangle M?

24 A. Yes.

1 Q. So when your servicemen go on these
2 calls, do they leave a record with the customer?

3 A. Yes, they do.

4 Q. Are you familiar with the records?

5 A. Yes, I am.

6 Q. They are paper?

7 A. Paper with three copies on them.

8 Q. Three copies. They are triplicate?

9 A. Triplicate.

10 MR. MANZO: I am going to ask the reporter
11 to mark document MMU0007268 as the next exhibit.

12 (The document was thereupon marked
13 for identification as Olczak
14 Deposition Exhibit No. 9, as of
15 3/4/08.)

16 BY MR. MANZO:

17 Q. And I place that before you.

18 Mr. Olczak, what is this document?

19 A. This is a service report which is
20 filled by our Miyano service engineer after
21 complete the service work on the machine.

22 Q. So is this the service report that is
23 normally used?

24 A. This is a normal service report where

1 we use currently.

2 Q. Okay. And does this document show the
3 triangle logo at the top left?

4 A. Yeah, we do have this service form
5 since I started.

6 Q. Okay. And it does contain the
7 triangle logo or does it not?

8 A. It does have.

9 Q. Does this document bear your signature
10 anywhere?

11 A. Yes. This is actually my service
12 report.

13 Q. Can you tell us the date of this
14 report, please?

15 A. It is September 27th, 2005.

16 Q. And what was the service that was
17 requested?

18 A. That was requested by replacing a
19 spindle.

20 Q. What is a spindle?

21 A. Spindle is a component of machine.

22 Q. What does it do?

23 A. This particular case, holding the
24 tool, the cutting tool.

1 Q. Okay.

2 And then what is the service that was
3 performed.

4 A. It was replaced. Replacement.

5 Q. Can you read it into the record for us
6 what you wrote there?

7 A. It was, "Replacement of the spindle,
8 adjustment of orientation, check run out," and
9 states, "Machine runs fine."

10 Q. Is this the form you said is in
11 triplicate?

12 A. Yes. There is a copy for customer
13 and there is three copies for internal usage of
14 Miyano internal accounting and history storage.

15 Q. So when your servicemen go on service
16 calls, do they take one or more of these with
17 them?

18 A. They take one which contain already
19 three copies with them. They give one to
20 customer and he brings three back to Miyano.

21 Q. At the bottom right there is a line
22 that says, "Approved By," and there is marking
23 above that in script. Can you tell us what that
24 is?

1 A. That is customer signature.

2 Q. Okay. Do you recall whether the
3 triangle logo which has the winged M in it like
4 you are wearing on your shirt, have you seen that
5 around the company in other places?

6 A. I have seen them on machines before,
7 I have seen on invoices, I have seen on packing
8 slips to customers.

9 Q. How do you get paid? Do you get a
10 check or did you get a direct deposit?

11 A. I have salary direct deposit.

12 Q. Did you get anything in writing when
13 there is a direct deposit from the company that
14 tells you they deposited into your checking
15 account? Or a check stub or something?

16 A. Yes, we do.

17 Q. Is there a logo on that?

18 A. Usually, my wife takes care of it. I
19 believe there is. I am not sure.

20 Q. Have you seen company checks made out
21 to -- that are not payroll checks? Do you
22 remember seeing any of those?

23 A. Yes.

24 Q. Do you know what kind of markings are

